

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

| | | |
|-----------------------------|---|-------------------------|
| CHARLES F. WUENSTEL, JR., |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 06-728 |
| |) | |
| WESTMORELAND COUNTY PRISON, |) | |
| et al., |) | |
| Defendants. |) | |

MEMORANDUM ORDER

The plaintiff, Charles F. Wuenstel, Jr., an inmate at the State Correctional Institution at Greensburg ("SCIG"), has presented a civil rights complaint which he has been granted leave to prosecute without prepayment of costs against defendants, Westmoreland County Prison, Warden John Walton, Deputy Warden Edward Zalweski and Naphcare (Bill Nicholson). On June 6, 2006, his motion to proceed in forma pauperis (IFP) was granted (Docket No. 2). The order stated that, because he did possess sufficient funds to pay the filing fee of \$350 and because he had an inmate account balance of \$0.25 such that requiring him to pay an initial filing fee would have been unreasonable, the payment of an initial filing fee was held in abeyance, but he was required to make monthly payments of 20 percent of the preceding month's income until he has paid the full filing fee.

On June 21, 2006, the Court received his authorization permitting withdrawal of his prison account funds to pay the \$350 filing fee (Docket No. 4). Thereafter, SCIG began making partial payments from his inmate account. (Docket Nos. 12, 14.)

On September 11, 2006, the Court received a letter from the plaintiff in which he indicated that he is "having a terrible time financially with the twenty percent that they take out

of all the money I [receive] from family or my prison wage of 19 cents per hour 20 hours a week.” He states that he “want[s] to know if I drop the lawsuit will the charges stop?”

The answer is no. The Prison Litigation Reform Act (PLRA) provides that:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). Numerous courts have held that: “A prisoner proceeding IFP in the district court is obligated to pay the full filing fee upon the filing of a complaint. § 1915(b)(1). No relief from an order directing payment of the filing fee should be granted for a voluntary dismissal.” Hatchet v. Nettles, 201 F.3d 651, 654 (5th Cir. 2000) (citations omitted). See also McGore v. Wigglesworth, 114 F.3d 601, 607 (6th Cir. 1997); In re Tyler, 110 F.3d 528, 529-30 (8th Cir. 1997); Thurman v. Gramley, 97 F.3d 185, 187 (7th Cir. 1996), overruled on other grounds, Walker v. O’Brien, 216 F.3d 626 (7th Cir. 2000); Copley v. Henderson, 980 F. Supp. 322 (D. Neb. 1997).

Courts have also held that the obligation to pay the full appellate filing fee arises at the time the notice of appeal is filed and continues even though the appeal may be dismissed. See Hall v. Stone, 170 F.3d 706, 707-08 (7th Cir. 1999); Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). See also In re Alea, 286 F.3d 378 (6th Cir. 2002) (dismissal of inmate’s civil rights action pursuant to the three-strikes provision of § 1915(g) did not obviate the requirement that he pay the full filing fee to the district court). Thus, even if the plaintiff elects to voluntarily dismiss this action, the payments from his inmate account will continue until such time as the entire filing fee has been paid.

AND NOW, this 12th day of September, 2006,

IT IS ORDERED THAT plaintiff shall notify the Court by September 30, 2006 whether he wishes to continue with his prosecution of this case or to move for the case to be voluntarily dismissed.

s/Robert C. Mitchell
ROBERT C. MITCHELL
United States Magistrate Judge

cc: Charles F. Wuenstel, Jr.
FY-0085
SCI Greensburg
RD 10 Box 10
Greensburg, PA 15601-8999